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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 151

CLARENCE DYE,

Appellant,

vs.

STATE OF OHIO

JURISDICTIONAL STATEMENT OF DEFENDANT-APPELLANT IN APPEAL TO THE UNITED STATES SUPREME COURT.

CLARENCE DYE,
P. O. Box 511,
Columbus 15, Ohio,
"In Own Behalf."

IN THE

SUPREME COURT OF THE UNITED STATES

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JURISDICTIONAL STATEMENT OF DEFENDANT-APPELLANT IN APPEAL TO THE UNITED STATES SUPREME COURT.

Jurisdictional Statement

The jurisdiction of the Supreme Court of the United States is hereby invoked in this instant case, by virtue of the following:

Clarence Dye, the Defendant-Appellant, herein was convicted on the charge of armed robbery, (Section, 2901.13) Revised Code of Ohio; and, is now serving from ten to twenty-five years, in the Ohio Penitentiary.

Clarence Dye, was convicted on December 2, 1955, in Common Pleas Court, Akron, Ohio.

Motion for a new trial was filed within the Statutory time and on April 25, 1956, said Motion was overruled.

Notice of Appeal was subsequently filed; and, an Appeal was heard on "Bill of Exceptions," "Assignment of

Errors," in the Ninth District Court of Appeals, Summit County; and, on August 12, 1957, a Judgment of affirmance was rendered.

Notice of Appeal and Proof of Service was filed in the Court of Appeals, September 3, 1957, in an Appeal to the Ohio Supreme Court.

On December 18, 1957, Motion for Leave to Appeal from the Court of Appeals, Summit County, was overruled, and Appellant was denied the right to Appeal by the Supreme Court of Ohio. This instant cause of action is an Appeal as of Right from a felony conviction originating in the Common Pleas Court, Summit County, Akron, Ohio.

On December 18, 1957, Motion for Leave to Appeal was denied by the Ohio Supreme Court.

The Ohio General Code, and the Revised Code of Ohio, provides for an Appeal as of Right in Felony cases.

(Section 2953.04 of the Revised Code of Ohio provides)

> "May be filed as a matter of right within thirty days after sentence and judgment. After thirty days from sentence and judgment, such appeal may be filed only by leave of the Court or two of the Judges thereof."

The Appellant was denied this Right to Appeal, and has serious Constitutional Debatable Questions, involving Constitutional Deprivations.

Therefore, the jurisdiction of this High Tribunal is invoked under, *Part V. Rule 19 (B) Rules of the Supreme Court of the United States; and, pursuant to the requirements of Title 28, U.S. Code, Section 2254,* which provides in part:

> ". . . unless it appears that the applicant has exhausted the remedies available in the Courts of the State, or that there is either an absence of available State corrective process, or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner, . . ."

The Appellant has exhausted all legal recourse and remedies available in the Courts of Ohio to correct or remedy these violations, and deprivations.

The questions presented by this Appeal are as follows:

1. Was the Defendant-Appellant denied the right to Due Process of Law, and the Equal protection of the Laws, when the Supreme Court of Ohio summarily denied his Motion for Leave to Appeal without Opinion, when both similar and identical questions raised by the said Motion for Leave to Appeal, had been resolved by the Ohio Courts of Review in a manner, which if applied to the instant case, would nullify the conviction.

On July 29, 1946, an armed robbery occurred in Akron, Ohio. Approximately nine years later Clarence Dye, the Appellant herein, was arrested in Milwaukee, Wisconsin, on another matter. The Appellant was extradited to Akron, Ohio to face an indictment which was returned on January 20, 1947, for armed robbery.

On August 25, 1955, at arraignment, Dye entered a plea of Not Guilty; on November 28, 1955, the Court gave the Prosecutor permission to amend the indictment in the Court room, (without Grand Jury action). A Jury was then empaneled and sworn, and the trial began; on December 2, 1955, Dye, the Appellant herein was found guilty.

This case concerns a man who was arrested approximately nine and one-half years after a robbery. This man was arrested in another State, on another matter, which was apparently utilized to bring about his extradition to Ohio, on the armed robbery charge. The other matter has since been disregarded.

The Appellant, herein, was found guilty solely on circumstantial evidence, consisting of inference upon inference; insinuation and misconduct of the Prosecuting Attorney; and, extrajudical comments, and activities by the Pre-

siding Judge; all operating to deny the rudiments and basic principles of a Fair and Impartial trial, within the scope and meaning of the Fourteenth (14) Amendment, of the Constitution of the United States.

Further, by virtue of the fact that Appellant left Akron, shortly after this robbery; and, the allegation that money supposedly from this robbery was found in rooms that he had vacated; rooms that were accessible to other persons.

The money, or the Appellant, was never identified as being connected with the robbery. The money was turned over to the Police Pension Fund, and not identified by the robbery victims, or returned to them. The money, or the wrappers, allegedly found in the rooms was never produced in the Court room.

The Court of Appeals of Summit County, Akron, Ohio, in their judgment of affirmance in this case ruled; that, "The verdict in their opinion was not manifestly against the weight of evidence." They also stated that, "The case was purely circumstantial," and they felt that the Jury, in returning a guilty verdict, took into consideration the fact that the Appellant had left town shortly after the robbery.

On Appeal to the Ohio Supreme Court, on Notice of Appeal; Motion for leave to Appeal; and Assignment of Errors; Bill of Exceptions; the Appellants Motion for leave to Appeal was summarily overruled and dismissed on December 18, 1957, after the Appellee filed a belated Motion to dismiss, on the grounds that "No Debatable Constitutional Question," was involved.

Appellee's Motion and Brief were filed approximately Six (6) days late, and obviously out of time and in default according to *Rule VII, Section 2A, of the Rules of Practice, Ohio Supreme Court.* This Appellant has exhausted all remedy available in the Courts of Ohio; without being given the relief to correct or remedy the foregoing Federal Constitutional deprivations.

(See Title 28. U.S.C.A. Section 2254).

See Also:

Ex Rel. Stephen J. Herman v. *Dr. John W. Claudy, U.S. Supreme Court No. 45, October term, (1955)*

Certiorari was granted in the above case, *in 349 U.S. 904*, because of exactly similar circumstances involving summary dismissal, without opinion in Pennsylvania.

The Court held in: *Tot* v. *United States, 319 U.S. 463 (1943)*

> "But a presumption that a firearm or ammunition in the possession of a person convicted of a crime of violence was transported or received in violation of Law was held invalid because there was no rational connection between the facts proved and that presumed."

Then in: *Exparte Wall, 107 U.S. 265, 289 (1883).*

> "In all cases, that kind of procedure is Due Process of Law which is suitable and proper to the nature of the case, and sanctioned by the established customs and usages of the Courts."

And in regards to a fair hearing it was held in: *Wong Yang Sung* v. *McGrath, 339 U.S. 33, 50 (1950).*

> "When the Constitution requires a hearing it requires a fair one, held before a tribunal which at least meets currently prevailing standards of impartiality."

Further, in regard to other attributes of a fair trial it was held in: *Lisenba* v. *California, 314 U.S. 219, 236 (1941).*

> "As applied to a criminal trial, denial of Due Process is the failure to observe that fundamental fairness is essential to the very concept of Justice. In order to declare a denial of it * * * (The Court) must find that the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevents a fair trial."

Also, on Equal Protection it was held in: *Neal* v. *Delaware, 103 U.S. 370 (1881).*

"or by inequality of treatment in the Courts."

The reasons why this instant cause should be considered and reviewed with Briefs on the merits, are to the resolution and determination that the Appellant herein should not be acquired to serve a Ten to Twenty-Five year sentence for armed robbery, when the following serious Constitutional Violations took place at his original trial, and on Appeal to the Appellate Court, and State Supreme Court, his cause was not decided in a way consistent with Similar and Like Cases; Customs, usage, and Precedents, and Prevailing Standards of Justice.

Reasons Enumerated:

1. In failing to reverse for the error in the verdict in which inference upon inference was pyramided to arrive at a finding.
2. In failing to reverse for the comments the trial Court made upon the evidence and testimony.
3. In failing to reverse for prejudicial error which resulted by allowance of hearsay evidence in the trial of the case.
4. In failing to reverse for the trial Court's prejudicial comments made in the presence of the jury.
5. In allowing testimony concerning the extradition hearing which was further objectionable as being hearsay, to stand, contrary to Statute and the Constitutions of the United States and of Ohio.
6. In failing to recognize the prejudicial error which resulted from misconduct of Counsel.
7. In affirming the finding of the Lower Court on the basis of conduct of the Defendant-Appellant after the crime constituting either aiding and abetting conspiracy.
8. In failing to recognize the prejudicial error which occurred in the charge of the Lower Court.

9. In failing to recognize that the Defendant-Appellants Constitutional Rights were abridged, to his prejudice.
10. In failing to reverse for the reason that the verdict is against the weight of the evidence.
11. And in other matters which occurred at the trial which are prejudicial to this Appellant and which are apparent upon the face of the Record.

Had any of the above Reasons, or Questions been resolved in like manner as the Citations appended hereto the Appellant would have been entitled to have his conviction set aside.

Further, the denial of his Motion for Leave to Appeal, denied him the Equal Protection of the Laws, with that granted the parties in the Cases cited, and Appended Hereto.

The Principles set forth in these Decisions are thoroughly established and part of our Law, and this Appellant is entitled to have them applied to the Facts in this cause.

He has been wrongfully, and prejudicially convicted, and the Ohio Supreme Court has refused to review his case.

In other cases either the Ohio Supreme Court, or, the Ohio Courts of Appeals, or both have rendered Decisions which would nullify such a conviction, as is presented before this Honorable Supreme Court of the United States.

In conclusion this Defendant-Appellant, predicates his most humble Prayer that this High Tribunal will once again exercise its powers of supervision to correct or remedy these grievous wrongs, and grant this Jurisdictional Statement for the purpose of reviewing this cause.

Respectfully submitted,

CLARENCE DYE,
No. 100363,
Columbus 15, Ohio,
"In own behalf."

CITATIONS IN SUPPORT OF JURISDICTIONAL STATEMENT *

State v. Nevius, 77 O. App. 161.
Columbus v. Treadwell, 46 O.L.A. 367.
Penter v. Schwartz, 85, O.App. 477.
Mechanics and Traders Ins. Co. v. Himmelstein, et al, 24 O.App. 29.
Sobolovitz v. Lubric Oil Co. 107 O.S. 204.
State v. Bundy, (NO. 2799). O. App. Fifth District.

Federal Statute:

Title 28, U.S.C.A. 1738.

IN THE SUPRÉME COURT OF OHIO

Case No: 35382

(Caption Omitted)

Journal Entry

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Summit County, upon the motion of the appellee to dismiss the appeal filed as of right herein, and was argued by counsel.

On consideration whereof, it is ordered and adjudged that said appeal be, and the same hereby is, dismissed for the reason no debatable constitutional question is involved in said cause.

It is further ordered and adjudged that the appellee recover from the appellant its cost herein expended, taxed at $

ORDERED, That a special mandate be sent the Court of Common Pleas of Summit County, to carry this judgment into Execution.

ORDERED, That a copy of this entry be certified to the Clerk of the Court of Appeals of Summit County, "for entry." J. 42-464.

* Had the Appellate Court, and the Ohio Supreme resolved the Defendant-Appellant's case in like manner, according to the prevailing standards of Justice, customs and usage with the Citations and Statute cited above, his cause would have been reversed, and the conviction set aside.